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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of	)	
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Administration of the North American Numbering Plan	)	**CC Docket No. 92-237 Phase Two**

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking, FCC 94-79, (released April 4, 1994) in the captioned proceeding ("NPRM"). Specifically, TRA urges the Commission to mandate presubscription for interstate intraLATA "1+" toll calls and to require local exchange carriers ("LECs") to deliver all such calls to the carrier preselected by the end user to carry the traffic.

I.

INTRODUCTION

TRA is an association created to foster and promote the interests of entities engaged in the "switchless," and other forms of, resale of long distance telecommunications services both within the United States and internationally. Switchless resale is predicated upon the resale of not only the transmission capacity, but

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the switching capability, of underlying facilities-based carriers. Switchless resellers generally serve small and mid-sized businesses and residential customers, providing such entities and individuals with access to rates otherwise available only to much larger users. Switchless resellers also provide their customers with a broad range of value-added services and customer support functions.

TRA's members -- nearly 200 resale carriers and their underlying service and product suppliers -- range from emerging, high-growth companies to well-established, publicly-traded corporations. TRA members serve hundreds of thousands of telecommunications customers, representing more than ten billion minutes of long distance traffic annually. A relatively new market segment, switchless resale is the fastest growing segment of the long distance telecommunications industry. Indeed, the switchless resale industry already is populated by more than 500 carriers, generates revenues in the billions of dollars and represents roughly two percent of the long distance telecommunications market. And current forecasts are that the switchless resellers' share of the long distance market will more than double in the next 5 to 7 years.

TRA was chartered, among other things, to represent the views of its members before the Commission, other federal and state regulatory agencies and departments, legislative bodies and federal and state courts. The Association is filing comments here in furtherance of that directive.

II.

ARGUMENT

Commission rules and policies currently afford an end user the opportunity to select a specific interexchange carrier ("IXC") as the primary carrier to handle its interstate interLATA traffic. LECs are required to route all "1+" interstate interLATA traffic to the preferred IXC ("PIC") selected by the end user through this presubscription process.[1/] The "1+" equal access requirement has produced a competitive long distance marketplace in which end users may select among hundreds of IXCs, which compete intensely for traffic on a price and service basis.[2/]

In sharp contrast, the LECs routinely deny interstate intraLATA presubscription or "dial-1" interstate intraLATA access to all carriers other than themselves. Thus, while end users are able to access an LEC's interstate intraLATA services on a dial-1 basis, they must dial a "10XXX" prefix, or access code, in addition to the called number in order to access the interstate intraLATA services of any other carrier in the LEC's serving territory, including the interstate intraLATA services of individual TRA members. The unavailability of presubscription for interstate intraLATA "1+" toll calls provides the LECs with an insurmountable competitive advantage. Indeed, as the Commission has recognized, the LECs currently screen

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[1/] See, e.g., Investigation of Access and Divestiture Related Tariffs, 101 F.C.C.2d 911, Appx. B (1985).

[2/] Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880, ¶¶ 36-51 (1991), recon. 6 FCC Rcd. 7569 (1991), further recon. 7 FCC Rcd. 2677 (1992), further recon. 8 FCC Rcd. 2659 (1993); Second Report and Order, 8 FCC Rcd. 3668 (1993).

and complete or "strip" the vast preponderance of interstate intraLATA toll calls.[3]

The impact on ratepayers of the LECs' failure to provide dial-1 interstate intraLATA access to carriers other than themselves is manifest. No less obvious is the adverse impact of the unavailability of presubscription for interstate intraLATA "1+" toll calls on IXCs. Competition for interstate intraLATA traffic is significantly reduced; indeed, it is virtually eliminated. In the absence of viable competition, rates, of course, are inflated, often to a significant degree. As the Commission has correctly noted, interstate intraLATA calls are often carried by LECs at tariffed rates substantially higher then those that would have been charged if the call had been turned over to a customer's presubscribed interLATA IXC.[4] Thus, ratepayers bear the burden of higher charges and IXCs, including TRA members, are, as a practical matter, denied access to a segment of the toll market.

The sole countervailing arguments weighing against extension of "1+" equal access to the interstate intraLATA toll market are the concerns that such an action (i) could place the Bell Operating Companies ("BOCs") at a competitive disadvantage and/or (ii) might conflict with the Modification of Final Judgment ("MFJ") assumption

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[3] NPRM at ¶55.

[4] Id. at ¶57. The example cited by the Commission is a comparison of rates charged by Bell Atlantic for a call transported between Silver Spring, Maryland and Manassas, Virginia and the rates charged by AT&T or MCI for a call transported between Silver Spring, Maryland and San Francisco, California. In the cited illustration, the differential would have been significantly larger if the Commission had used rates charged by TRA members rather than AT&T or MCI.

that the BOCs would be able to compete for all intraLATA toll traffic.[5] TRA submits that the adverse impact on ratepayers and IXCs of the unavailability of presubscription for interstate intraLATA "1+" toll calls could be remedied, while at the same time addressing the above-referenced BOC/MFJ concerns. This could be accomplished by authorizing, but not requiring, the LECs to introduce dual or multicarrier presubscription in conjunction with the extension of "1+" equal access to the interstate intraLATA toll market.

The LECs are the only entities that are in a position to "level the competitive playing field;" they, and they alone, can introduce dual or multicarrier presubsciption. In contrast, the IXCs are powerless. Thus if the status quo were to be maintained, the competitive disequilibrium would remain. If, however, the competitive advantage were shifted to the IXCs (i.e., presubscription for interstate intraLATA "1+" toll calls was mandated), and the LECs were provided the opportunity to introduce dual or multicarrier presubscription, they would be able to eliminate the IXCs' competitive advantage. The decision whether to do so would be driven by the extent of the perceived business opportunity weighed against the anticipated costs of implementing dual or multicarrier presubscription.

The BOCs would not be denied the opportunity to compete. Nor would they be placed at a competitive disadvantage that they were

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[5] NPRM at ¶57. United States v. American Tel. and Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom Maryland v. United States, 460 U.S. 1001 (1983); United States v. Western Elec. Co., 569 F.Supp. 1057, (D.D.C. 1983), aff'd sub nom California v. United States, 464 U.S. 1013 (1983).

not empowered to overcome. Certainly, the LECs would bear the burden of overcoming the competitive disadvantage, but given the competitive advantage they have enjoyed since divestiture in the interstate intraLATA market, they should not be heard to complain with respect to this burden. Moreover, the LECs have essentially forfeited whatever right they may have had to complain by abusing their decade-old competitive advantage by imposing inflated charges on essentially captive ratepayers.[6]

TRA's approach is technically feasible. Just as 800 calls can be routed to different carriers based upon their originating LATA,[7] so can outbound calls be routed to different carriers based upon the location of the called number. Because TRA's approach is technically feasible, it is also legally permissible. The BOCs would not be denied an opportunity to compete for interstate intraLATA traffic; it would be up to them to decide if and how they would compete. Granted, dual or multicarrier presubscription would impose additional costs on the LECs, but under TRA's approach, market forces would determine whether the expenditures associated with dual or multicarrier presubscription were justified.

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[6] Also arguing in favor of such a forfeiture of the right to complain are proposals such as Ameritech's "ustomers First Plan" which was structured initially to provide "1+" equal access for intraLATA toll traffic only to those carriers which also provided local service. See, e.g., Reply of Ameritech in Support of its Motions to Remove the Degree's Interexchange Restriction, filed April 12, 1994 in United States v. Western Elec. Co., No. 82-0192 (D.D.C.). Obviously, implementation of such a proposal would provide Ameritech and other LECs with a tremendous competitive advantage.

[7] See e.g., Provision of Access for 800 Service, 8 FCC Rcd. 1423 (1993).

III.

CONCLUSION

By reason of the foregoing, TRA strongly urges the Commission to modify its existing rules and policies regarding LEC treatment of interstate intraLATA toll traffic in a manner consistent with the above. If "1+" equal access were extended to the interstate intraLATA toll market, the carrier members of TRA would bring to small and mid-sized businesses and residential customers in this market the same superior rates and service they now provide in the interstate interLATA toll market.

Respectfully submitted,

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June 7, 1994

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